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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 441

ROBERT E. WYNGAARD

Petitioner,

v.

ROBERT F. KENNEDY, Attorney General of the United States

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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ROBERT F. KENNEDY, Attorney General of the United States

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit affirming a judgment of the District Court.

Opinions Below

The opinion of the Court of Appeals has not yet been reported and is set forth in the Appendix at pp. 17-19. The opinion of the District Court is unreported and is set forth in the Appendix at pp. 21-22.

Jurisdiction

The judgment of the Court of Appeals was entered on June 29, 1961. Jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

Questions Presented

1. Whether the Court of Appeals below was correct in following the ruling of the Second Circuit in *United States* v. *Flores-Rodriguez*, 237 F. 2d 405 (C.A. 2, 1956), and *Babouris* v. *Esperdy*, 269 F. 2d 621 (C.A. 2, 1959), that the determination whether an alien has committed a "crime" within the purport of the phrase "crime involving moral turpitude" in 8 U.S.C. 1182(a)(9) is a federal question and is not to be decided by reference to the law of the state in which the offense has been committed, in view of the contrary rulings in *Pino* v. *Landon*, 349 U.S. 901 (1949); *Holzapfel* v. *Wyrsch*, 259 F. 2d 890 (C.A. 3.) (1958); and *United States ex rel. Freislinger* v. *Smith*, 41 F. 2d 707 (C.A. 7.) (1930).

2. Whether a conviction of the offense of disorderly conduct under New York Penal Law is a conviction of a crime involving moral turpitude.

3. Whether the term, *crime involving moral turpitude*, written into a deportation statute [8 U.S.C. 1182(a)(9)] is sufficiently definite to encompass conduct known as disorderly conduct under a New York statute [Penal Law Section 722(8)], when such an offense is not defined as a crime under New York law, is less important than a misdemeanor, does not entitle the defendant to a jury trial, and which lacks other criminal safeguards or consequences, and whether the term, *moral turpitude*, as applied to the offense of disorderly conduct is sufficiently definite to avoid the constitutional prohibition against vagueness in a deportation statute.

Statutes Involved

Section 241 of the Immigration and Nationality Act (8 U.S.C. 1251) provides:

> "(a) Any alien in the United States * * * shall, upon the order of the Attorney General, be deported who—
>
> "(1) at the time of entry was within one or more of the classes of aliens excludable by the law existing at the time of such entry;"

Section 212(a)(9) of the Immigration and Nationality Act [8 U.S.C. 1182(a)(9)] provides:

> "Sec. 212(a) The following classes of aliens shall * * * be excluded from admission into the United States:
>
> "(9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense) * * *."

* * * * * * *

Section 4 of the Act of September 3, 1954 [8 U.S.C. 1182(a)] provides:

> "Any alien who is excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of Section 1 (3) of Title 18 (U.S.C.), by reason of the punishment actually imposed * * * may on and after September 3, 1954 * * * be * * * admitted to the United States if otherwise admissible; *Provided*, That the alien has committed only one such offense."

* * * * * * *